

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOANNE MAYE,

Plaintiff-Appellant,

v

MARK KRUTELL, DANIEL QUINN, and  
ANTHONY GREENE,

Defendants-Appellees.

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UNPUBLISHED

March 27, 2007

No. 272304

Macomb Circuit Court

LC No. 2005-002325-NO

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedure

Plaintiff alleges that defendants, who work for the Clinton Township Police Department, "assaulted, battered, and molested" her after finding marijuana and pills containing dextropropoxyphene, a schedule IV controlled substance, in her van. The label of the pill bottle was partially removed. Plaintiff alleges that by defendants' wrongful acts, she was falsely arrested, falsely imprisoned, and maliciously prosecuted. The trial court held that there was no genuine issue of material fact with respect to the existence of probable cause for plaintiff's arrest, no evidence that plaintiff's prosecution for possession of the pills<sup>1</sup> was initiated for an improper purpose, and no evidence of excessive force. In addition, the court held that defendant Quinn, an evidence technician, was not involved in any of the alleged wrongful acts, and that defendant Greene was not involved in the alleged assault and battery, false arrest, and false imprisonment.<sup>2</sup>

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<sup>1</sup> Plaintiff was not charged with possession of marijuana because a passenger admitted ownership.

<sup>2</sup> Plaintiff does not contest the trial court's determinations that Quinn was not involved in any alleged wrongdoing and that Greene was not involved in the alleged assault and battery, false  
(continued...)

## II. Legal Analysis

Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.” This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The absence of probable cause is essential to claims of false arrest and false imprisonment. False arrest requires the plaintiff to show that the defendant participated in an illegal and unjustified arrest and that the defendant lacked probable cause to do so. *Walsh v Taylor*, 263 Mich App 618, 626; 689 NW2d 506 (2004). “The elements of false imprisonment are (1) an act committed with the intention of confining another, (2) the act directly or indirectly results in such confinement, and (3) the person confined is conscious of his confinement.” *Id.*, p 627 (citation and internal quotation marks omitted). False imprisonment similarly requires that the restraint occurred without probable cause to support it. *Id.*, p 627. “If the arrest was legal, there has not been a false arrest or a false imprisonment.” *Peterson Novelties, Inc v City of Berkeley*, 259 Mich App 1, 18; 672 NW2d 351 (2003).

Plaintiff argues that the trial court erred in granting defendants’ motion for summary disposition with respect to these claims because she was not doing anything illegal when the police stopped her, she did not consent to the search of her vehicle, the police searched it without probable cause, and there were questions of fact concerning whether the contraband was in plain view. Plaintiff fails to explain how these points are material to the determination of whether her arrest was supported by probable cause for purposes of her civil action against the police. In a criminal proceeding, these issues may be relevant to determining whether the exclusionary rule might apply. But the application of the exclusionary rule to civil proceedings is an entirely different matter. See, e.g., *Kivela v Dep’t of Treasury*, 449 Mich 220; 536 NW2d 498 (1995) (civil jeopardy tax assessment proceeding). Although plaintiff seems to suggest that alleged improprieties in the stop or search of her vehicle are material to the determination whether defendants lacked probable cause for her arrest as required for her civil claims, she has not developed that argument or supported it with pertinent authority.

“It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” Accordingly, we need not address this issue, and therefore, decline to do so. [*Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Plaintiff has failed to show that the trial court erred in granting defendants’ motion for summary disposition with respect to the false arrest and false imprisonment claims.

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(...continued)

arrest, and false imprisonment. Thus, plaintiff has abandoned any claim that the trial court erred in granting summary disposition to these defendants with respect to these claims.

Plaintiff also argues that there is a genuine issue of material fact concerning whether defendants maliciously prosecuted her.

The elements of malicious prosecution are:

(1) that the defendant has initiated a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) that the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice. [In *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998).]

Plaintiff argues that defendant Krutell, after having spoken with a neighbor who claimed ownership of the pills, improperly proceeded with the prosecution of plaintiff for possession of the pills “having full knowledge that they did not belong to her.” Plaintiff further asserts that “even if Defendant Krutell needed to further investigate [plaintiff’s] involvement with the pills, it should not have taken numerous court appearances and seven months to clear up this matter—particularly considering that another person admitted to ownership of the pills.” Finally, she notes that for purposes of malicious prosecution, malice may be inferred from the lack of probable cause.

Assuming that defendants Krutell and Greene, rather than the prosecutor, may be deemed to have initiated the prosecution,<sup>3</sup> the undisputed presence of the pills, in a bottle with the label partially removed, in plaintiff’s van while she was operating it, provided probable cause for their actions. An inference of malice can be drawn only when there is an absence of probable cause. Here, however, probable cause existed. Therefore, plaintiff has not shown that the trial court erred in granting summary disposition with respect to defendants on the malicious prosecution claim.

Finally, plaintiff argues that she established an issue of material fact concerning whether defendants used excessive force against her to support her claim for assault and battery. She testified that the handcuffs were pinching her and that an officer refused her request to loosen them.

In *VanVorous v Burmeister*, 262 Mich App 467, 482-483; 687 NW2d 132 (2004), this Court discussed assault and battery in the context of claims against governmental actors:

To recover civil damages for assault, plaintiff must show an “intentional unlawful offer of corporal injury to another person by force, or force unlawfully directed toward the person of another, under circumstances which create a well-founded apprehension of imminent contact, coupled with the apparent present ability to accomplish the contact.” To recover for battery, plaintiff must

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<sup>3</sup> See *Walsh, supra*, p 633 n 10.

demonstrate a “wilful and harmful or offensive touching of another person which results from an act intended to cause such a contact.”

But again, government actors may find it necessary-and are permitted-to act in ways that would, under different circumstances, subject them to liability for an intentional tort. To find for plaintiff on these claims, our courts would have to determine that the officers’ actions were not justified because they were not objectively reasonable under the circumstances. [Citations omitted.]

The use of handcuffs is not unreasonable force. *Brewer v Perrin*, 132 Mich App 520, 528-529; 349 NW2d 198 (1984).

Because plaintiff did not present evidence showing unreasonable force during her arrest, the trial court did not err in granting summary disposition to defendants with respect to the assault and battery claim. Additionally, the trial court did not err in granting summary disposition to defendant Greene because he was not involved in the arrest.

Affirmed.

/s/ Brian K. Zahra  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens